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**MINING CLAIMS—AGREEMENT FOR PURCHASE—RESCISSION.**—The Detroit and Deadwood Gold Mining Company took an option, with right to purchase, upon some land in South Dakota belonging to one Smith, and having paid \$5000 per agreement they took possession of the land, put their machinery in place, and sunk a shaft. Title to part of land fails; the Company rescinds the contract and removes the machinery; Smith now brings an action to recover possession of the machinery with damages for wrongful detention and removal. *Held*, that the contract could not be rescinded and Smith is entitled to recover. *Smith v. Detroit and Deadwood Gold Mining Co.*,—(1903),—South Dakota—97 N. W. 17.

The majority of the court bases its decision upon two grounds (1st) the agreement that \$450 per acre might be deducted from purchase price should title to any of the land fail; (2nd) the land having depreciated in value Smith cannot be placed in the same position as he would have been had the contract not been made. The minority argues, that since there has been a material failure of title the Mining Company may rescind the contract, notwithstanding the agreement. Revised Civil Code of South Dakota for 1903 sections 1283–1284. *Bigham v. Madison*, 103 Tenn. 358; that the "same position" means a return of the subject matter and the fact that the value has depreciated has no effect. *Snow v. Alley*, 144 Mass. 546; *Goodrich v. Lathrop*, 94 Cal. 56.

**PARENT'S LIABILITY TO ONE INJURED BY FIREARMS IN SON'S HANDS.**—A recent Wisconsin case contains an interesting statement of facts upon which a parent is sought to be held liable, on the ground of negligence, for the torts of an infant son. A father gave his crippled son, who was 17 years of age, a 22-caliber Stevens rifle, which a younger son, a boy of 7 years, was in the habit of carrying to and from the woods for his crippled brother, who walked with difficulty. The father had directed that the younger son should never carry the gun when loaded and had no reason to believe his instructions were not obeyed. The crippled son left the rifle on the bank of a stream while he and others were catching minnows. Plaintiff's minor son of 6 years met his death, while the gun which had been so left, was either on the ground or in the hands of defendant's minor son of 7 years. *Held*, that such facts do not establish the father's negligence as a matter of law. *Taylor v. Seil* (1903), Wis.—97 N. W. Rep. 498.

To establish negligence there should be either direct proof of the facts constituting such negligence or proof of facts from which negligence may be reasonably presumed. *Cleveland Terminal & Valley R. R. Co. v. Marsh*, 63 Ohio St. 236, 52 L. R. A. 142. The court in refusing to set aside the verdict were not prepared to say that no reasonable mind could reach a conclusion of ordinary care from the facts. It certainly cannot be regarded negligent to intrust a rifle to the care of an ordinary country boy of 18, nor to allow a boy of 7 to carry an unloaded gun. Further than this the actions of the father did not go. See—*Wilson v. Garrard*, 59 Ill. 51, *Paulson v. Howser*, 63 Ill. 312, *Hagerty v. Powers*, 66 Cal. 363, 5 Pac. Rep. 622, 56 Am. Rep. 101. *Hoverson v. Noker*, 60 Wis. 511, 19 N. W. Rep. 382, 50 Am. Rep. 381.

**PARTNERSHIP—NATIONAL BANKS—RIGHT TO BECOME A PARTNER.**—The Elsmere Syndicate was a partnership consisting of forty shares transferable upon the books of the syndicate, the transfer of which was intended to make the transferee a partner without dissolving the firm. M, the owner of nine shares in the syndicate, transferred his shares to the defendant bank to secure his indebtedness to the bank. The plaintiffs, creditors of the syndicate, sued the shareholders, including the bank, seeking to hold them liable as partners.

*Held*, the bank could not become a partner and could not incur a partnership liability; but the transfer of the shares made the bank a part owner in severalty of the property of the firm and as such liable for its share of the debts of the syndicate. *Merchants' National Bank v. Wehrman et al.* (1903),—Ohio, —68 N. E. Rep. 1004.

National banks can lawfully exercise only those powers which are expressly granted or which are incidental to the business of such banks. *Logan County Bank v. Townsend*, 139 U. S. 67, 73; *California Bank v. Kennedy*, 167 U. S. 362. The power to become a partner is not expressly granted and the principal case holds that such a power is in no sense incidental to the business of national banks. Though national banks may not lawfully take and hold shares in a corporation as an investment, yet they may accept such stock as collateral to secure a debt. The bank may in this way become the owner of such stock and liable the same as any other stockholder. *California Bank v. Kennedy, supra*, *National Bank v. Case*, 99 U. S. 628. While the principal case does not go so far as to hold the bank jointly liable, it seems to be in harmony with the principle of the foregoing cases in holding it to some degree of liability. Yet it is probable that some courts would hold the bank liable as a partner. *Catskill Bank v. Gray*, 14 Barb. 471; *Allen v. Woonsocket Co.* 11 R. I. 288; *Bushnell v. Chautauqua County Nat. Bank*, 10 Hun, (N. Y.) 378.

PLEADING—INCONSISTENT DEFENSES UNDER THE CODE,—In an action for the price of windmills defendant pleaded (1) a general denial, (2) rescission of the contract, (3) a counter claim for breach of warranty, (4) damages for false representations in the sale, and (5) by an amendment, that he bought the mills as an agent. *Held*, that under the Iowa code these defenses were admissible. *Cole v. Laird* (1903)—Ia.—, 96 N. W. Rep. 744.

The Iowa Code, 1897, §3620, provides that "Inconsistent defenses may be stated in the same answer or reply, and when a verification is required, it must be to the effect that the party believes one or the other to be true, but cannot determine which." The Kentucky Code, 1895, § 113, provides that inconsistent defenses may not be pleaded, but adds that "a party may allege, alternatively, the existence of one or another fact, if he state that one of them is true, and that he does not know which of them is true." In the absence of such express provision there is an irreconcilable conflict among the code states. Mr. Pomeroy, in his work on CODE REMEDIES, § 722, seems to favor inconsistent defenses, while other code authors are opposed to them on principle. MAXWELL CODE PL., p. 397; BLISS CODE PL., § 343. The following decisions sanction inconsistent defenses: *Banta v. Siller*, 121 Cal. 414, 53 Pac. 935; *Hill v. Groesbeck*, 29 Colo. 161, 67 Pac. 167; *Weston v. Lumley*, 33 Ind. 486; *De Lissa v. Coal Co.*, 59 Kan. 319, 52 Pac. 886; *Society Italiana v. Sulzer*, 138 N. Y. 468, 34 N. E. 193; *Seeman v. Bandler*, 54 N. Y. S. 564, 25 Misc. 328; *McLamb v. McPhail*, 126 N. C. 218, 35 S. E. 426; *Millan v. R. R. Co.*, 54 S. C. 485, 32 S. E. 539; *Green v. Hughitt Tp.*, 5 S. Dak. 452, 59 N. W. 224. In the following inconsistent defenses are held not admissible: *Fernside v. Rood*, 73 Conn. 83, 46 Atl. 275; *Murphy v. Russell*, —Idaho—, 67 Pac. 421; *Steenerson v. Waterbury*, 52 Minn. 211, 53 N. W. 1146; *Oakes v. Zeimer*, 61 Neb. 6, 84 N. W. 409; *Insurance Co. v. Carnahan*, 63 Ohio St. 258, 58 N. E. 805; *Baines v. Coos Bay Co.* 41 Ore. 135, 68 Pac. 397; *Seattle Nat. Bank v. Carter*, 13 Wash. 281, 43 Pac. 331. It is generally held in the above decisions that two defenses are not inconsistent unless the proof of one disproves the other. In Ohio it is held there is no inconsistency if the defenses may be verified without perjury. *Insurance Co. v. Carnahan, supra*.